

1 **SECTION 1048.** 973.19 (1) (b) of the statutes is renumbered 974.03 (2) and
2 amended to read:

3 974.03 (2) A ~~person~~ defendant who has requested transcripts under s. 809.30
4 (2) may move for modification of a sentence or fine under s. 809.30 (2) (h).

5 **SECTION 1049.** 973.19 (2), (3), (4) and (5) of the statutes are renumbered 974.03
6 (1) (b), (c), (d) and (e) and amended to read:

7 974.03 (1) (b) Within 90 days after a motion under ~~sub. (1) par. (a)~~ par. (a) is filed, the
8 circuit court shall enter an order either determining the motion or, for cause,
9 extending the time for doing so by not more than 90 days ~~for cause~~.

10 (c) If an order determining a motion under ~~sub. (1) par. (a)~~ par. (a) is not entered timely
11 under ~~sub. (2) par. (b)~~ par. (b), the motion shall be considered denied and the clerk of the court
12 shall immediately enter an order denying the motion.

13 (d) ~~An~~ The rules governing civil appeals govern an appeal from an order
14 determining a motion under ~~sub. (1) par. (a)~~ par. (a) is ~~governed by the procedure for civil~~
15 ~~appeals~~.

16 (e) By filing a motion under ~~sub. (1) par. (a)~~ par. (a) the defendant waives his or her
17 right to file an appeal or postconviction motion under s. 809.30 (2).

* ****NOTE: This section reconciles -3257/P2 and -4648/P1.

18 **SECTION 1050.** 973.195 (1r) (e) of the statutes is amended to read:

19 973.195 (1r) (e) Notwithstanding the confidentiality of victim address
20 information obtained under s. ~~302.113 (9g) (g) 3. 302.1135 (7) (c)~~, a district attorney
21 who is required to send notice to a victim under par. (d) may obtain from the clerk
22 of the ~~circuit court~~ victim address information that the victim provided to the clerk
23 under s. ~~302.113 (9g) (g) 3. 302.1135 (7) (c)~~.

24 **SECTION 1051.** 973.20 (1g) of the statutes is repealed.

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1 **SECTION 1052.** 973.20 (1r) of the statutes is amended to read:

2 973.20 (1r) When imposing sentence or ordering probation for any crime, other
3 than a crime involving conduct that constitutes domestic abuse under s. 813.12 (1)
4 (am) or ~~968.075~~ 969.27 (1) (a), for which the defendant was convicted, the court, in
5 addition to any other penalty authorized by law, shall order the defendant to make
6 full or partial restitution under this section to any victim of a crime considered at
7 sentencing or, if the victim is deceased, to his or her estate, unless the court finds
8 substantial reason not to do so and states the reason on the record. When imposing
9 sentence or ordering probation for a crime involving conduct that constitutes
10 domestic abuse under s. 813.12 (1) (am) or ~~968.075~~ 969.27 (1) (a) for which the
11 defendant was convicted or that was considered at sentencing, the court, in addition
12 to any other penalty authorized by law, shall order the defendant to make full or
13 partial restitution under this section to any victim of a crime or, if the victim is
14 deceased, to his or her estate, unless the court finds that imposing full or partial
15 restitution will create an undue hardship on the defendant or victim and describes
16 the undue hardship on the record. Restitution ordered under this section is a
17 condition of probation, extended supervision, or parole served by the defendant for
18 a crime for which the defendant was convicted. After the termination of probation,
19 extended supervision, or parole, or if the defendant is not placed on probation,
20 extended supervision, or parole, restitution ordered under this section is enforceable
21 in the same manner as a judgment in a civil action by the victim named in the order
22 to receive restitution or enforced under ch. 785.

23 **SECTION 1053.** 973.20 (9m) of the statutes is amended to read:

24 973.20 (9m) When restitution is ordered, the court shall inquire to see if
25 recompense has been made under s. ~~969.13 (5) (a)~~ 969.42. If recompense has been

1 made and the restitution ordered is less than or equal to the recompense, the
2 restitution shall be applied to the payment of costs and, if any restitution remains
3 after the payment of costs, to the payment of the judgment. If recompense has been
4 made and the restitution ordered is greater than the recompense, the victim shall
5 receive an amount equal to the amount of restitution less the amount of recompense
6 and the balance shall be applied to the payment of costs and, if any restitution
7 remains after the payment of costs, to the payment of the judgment. This subsection
8 applies without regard to whether the person who paid the recompense is the person
9 who is convicted of the crime.

10 **SECTION 1054.** 973.20 (11) (a) of the statutes is amended to read:

11 973.20 (11) (a) Except as otherwise provided in this paragraph, the restitution
12 order shall require the defendant to deliver the amount of money or property due as
13 restitution to the department for transfer to the victim or other person to be
14 compensated by a restitution order under this section. If the defendant is not placed
15 on probation or sentenced to prison, the court may order that restitution be paid to
16 the clerk of court for transfer to the appropriate person. The court shall impose on
17 the defendant a restitution surcharge under ch. 814 equal to 5% of the total amount
18 of any restitution, costs, attorney fees, court fees, fines, and surcharges ordered
19 under s. 973.05 (1) and imposed under ch. 814, which shall be paid to the department
20 or the clerk of court for administrative expenses under this section.

21 **SECTION 1055.** 973.20 (12) (c) of the statutes is amended to read:

22 973.20 (12) (c) If a defendant is subject to more than one order under this
23 section and the financial obligations under any order total \$50 or less, the
24 department or the clerk of court, whichever is applicable under sub. (11) (a), may pay
25 these obligations first.

1 **SECTION 1056.** 974.01 (title) and (1) of the statutes are repealed.

2 **SECTION 1057.** 974.01 (2) of the statutes is renumbered 809.40 (4).

 ****NOTE: Please review the proposed renumbering. The statutory unit moves from
a section on misdemeanor appeals to a section on other specific appeals.

3 **SECTION 1058.** 974.02 of the statutes is amended to read:

4 **974.02 Appeals and postconviction relief in criminal cases Direct**
5 **appeals.** (1) ~~A motion for postconviction relief other than under s. 974.06 or 974.07~~
6 ~~(2) by the defendant in a criminal case shall be made in the time and manner~~
7 ~~provided in s. 809.30. An appeal by the~~ The defendant in a criminal case may appeal
8 from a judgment of conviction or from an order denying a postconviction motion or
9 from both. A direct appeal from a judgment of conviction shall be taken in the time
10 and manner provided in ss. 808.04 (3) and 809.30. ~~An appeal of an order or judgment~~
11 ~~on habeas corpus remanding to custody a prisoner committed for trial under s. 970.03~~
12 ~~shall be taken under ss. 808.03 (2) and 809.50, with notice to the attorney general~~
13 ~~and the district attorney and opportunity for them to be heard to 809.32.~~

14 (2) An appellant is not required to file a postconviction motion in the trial
15 circuit court prior to an appeal if the grounds are sufficiency of the evidence or issues
16 previously raised.



 ****NOTE: This section reconciles -0070/P2 and -4648/P1.

17 **SECTION 1059.** 974.02 (3) of the statutes is created to read:

18 974.02 (3) Motions for postconviction relief made after the time for direct
19 appeal has expired are governed by ss. 974.06 and 974.07.

20 **SECTION 1060.** 974.05 (1) (intro.) of the statutes is amended to read:

21 974.05 (1) (intro.) Within the time period specified by s. 808.04 (4) and in the
22 manner provided for civil appeals under chs. 808 and 809, ~~an appeal may be taken~~
23 by the state ~~from~~ may appeal any of the following:

1 **SECTION 1061.** 974.05 (1) (a), (b), (c) and (d) (intro.), 1. and 2. of the statutes are
2 amended to read:

3 974.05 (1) (a) ~~Final~~ A final order or judgment adverse to the state, whether
4 following a trial or a plea of guilty or no contest, if the appeal would not be prohibited
5 by constitutional protections against double jeopardy.

6 (b) ~~Order~~ An order granting postconviction relief under s. 974.02, 974.03,
7 974.06, or 974.07.

8 (c) ~~Judgment~~ A judgment and sentence or order of probation not authorized by
9 law.

10 (d) (intro.) ~~Order~~ An order or judgment the substantive effect of which results
11 in any of the following:

12 1. Quashing an arrest warrant;_;

13 2. Suppressing evidence; ~~or~~

14 **SECTION 1062.** 974.05 (2) of the statutes is amended to read:

15 974.05 (2) If the defendant appeals or prosecutes a writ of error, the state may
16 ~~move to review rulings of which it complains~~ cross-appeal any order, judgment, or
17 sentence described in sub. (1) (a) to (d), as provided by in s. 809.10 (2) (b).

18 **SECTION 1063.** 974.05 (3) of the statutes is repealed.

19 **SECTION 1064.** 974.06 (title), (1), (2) and (3) (intro.), (a), (b) and (d) of the
20 statutes are amended to read:

21 **974.06** (title) ~~Postconviction~~ Collateral postconviction procedure. (1)
22 ~~After~~ At any time after the time for direct appeal ~~or postconviction remedy~~ provided
23 in s. 974.02 has expired, a prisoner who is in custody under sentence of a court ~~or a~~
24 ~~person convicted and placed with a volunteers in probation program under s. 973.11~~
25 claiming and who claims the right to be released upon the ground that the sentence

1 was imposed in violation of the U.S. constitution or the constitution or laws of this
2 state, that the court ~~was without~~ lacked jurisdiction to impose ~~such the~~ sentence, or
3 that the sentence ~~was in excess of~~ exceeded the maximum authorized by law or is
4 otherwise subject to collateral ~~attack~~ review, may move the court which imposed the
5 sentence to vacate, set aside, or correct the sentence.

6 (2) ~~A copy of the motion for such relief is a part of the original criminal action,~~
7 ~~is not a separate proceeding and may be made at any time~~ under sub. (1) must be
8 served on the district attorney.

9 (2m) A motion under sub. (1) is part of the original criminal action, is not a
10 separate proceeding, and may be made at any time. The supreme court may
11 prescribe the form of the motion.

12 (3) (intro.) Unless the motion under sub. (1) and the files and records of the
13 action conclusively show that the person prisoner is entitled to no relief, the court
14 shall do all of the following:

15 (a) ~~Cause a copy of the notice to be served upon~~ Order the district attorney who
16 ~~shall to~~ file a written response within the time prescribed by the court.

17 (b) If it appears that counsel is necessary and if the ~~defendant~~ prisoner claims
18 or appears to be indigent, refer the person prisoner to the appellate division of the
19 state public defender for an indigency determination and appointment of counsel
20 under ch. 977. The court shall forward a copy of the motion and any response of the
21 district attorney to the state public defender.

22 (d) Determine the issues and make findings of fact and conclusions of law. If
23 the court finds that it rendered the judgment ~~was rendered~~ without jurisdiction, or
24 that the sentence imposed was not authorized by law or is otherwise open to
25 collateral ~~attack~~ review, or that there has been such a denial or infringement of the

1 constitutional rights of the ~~person~~ prisoner as to render the judgment vulnerable to
2 collateral ~~attack~~ review, the court shall vacate and set aside the judgment ~~aside~~ and
3 shall discharge the ~~person~~ prisoner or resentence ~~him or her or the prisoner~~, grant
4 the prisoner a new trial, or correct the sentence as may appear appropriate.

5 **SECTION 1065.** 974.06 (4) of the statutes is amended to read:

6 974.06 (4) All grounds for relief available to a ~~person~~ prisoner under this
7 section must be raised in his or her original, supplemental, or amended motion. Any
8 ground finally adjudicated or not so raised, or knowingly, voluntarily, and
9 intelligently waived in the proceeding that resulted in the conviction or sentence or
10 in any other proceeding the ~~person~~ prisoner has taken to secure relief may not be the
11 basis for a subsequent motion, unless the court finds a ground for relief asserted
12 ~~which that~~, for sufficient reason, was not asserted or was inadequately raised in the
13 original, supplemental, or amended motion.

14 **SECTION 1066.** 974.06 (5), (6), (7) and (8) of the statutes are amended to read:

15 974.06 (5) A court may entertain and determine ~~such a motion~~ under sub. (1)
16 without requiring the production of the prisoner at the hearing. The court may hear
17 the motion may be heard by telephone or live audiovisual means under s. 807.13.

18 (6) Proceedings under this section shall be considered civil in nature, and the
19 burden of proof shall be upon the ~~person~~ prisoner.

20 (7) ~~An A prisoner may appeal may be taken from the an~~ order entered on the
21 motion under sub. (1) as ~~from if the order were~~ a final judgment.

22 (8) A court may not entertain a petition for a writ of habeas corpus or an action
23 seeking that remedy in on behalf of a ~~person~~ prisoner who is authorized to apply for
24 relief by motion under ~~this section shall not be entertained~~ sub. (1) if it appears that
25 the ~~applicant~~ prisoner has failed to apply for relief, by file a motion, to under sub. (1)

1 with the court which sentenced the person prisoner, or that the court has denied the
2 person relief motion, unless it also appears that the remedy by motion is inadequate
3 or ineffective to test the legality of ~~his or her~~ the prisoner's detention.

* ****NOTE: Section 974.07 will be revised in a separate bill.

4 **SECTION 1067.** 974.07 (4) (b) of the statutes is amended to read:

5 974.07 (4) (b) Notwithstanding the limitation on the disclosure of mailing
6 addresses from completed information cards submitted by victims under ss. 51.37
7 (10) (dx), 301.046 (4) (d), 301.048 (4m) (d), 301.38 (4), 302.105 (4), 304.06 (1) (f),
8 304.063 (4), 938.51 (2), ~~971.17 (6m) (d)~~ 975.62 (4), and 980.11 (4), the department of
9 corrections, the earned release review ^{parole} commission, and the department of health
10 services shall, upon request, assist clerks of court in obtaining information regarding
11 the mailing address of victims for the purpose of sending copies of motions and
12 notices of hearings under par. (a).

13 **SECTION 1068.** 974.07 (7) (b) 1. of the statutes is amended to read:

14 974.07 (7) (b) 1. It is reasonably probable that the outcome of the proceedings
15 that resulted in the conviction, the finding of not guilty by reason of mental disease
16 or defect, or the delinquency adjudication for the offense at issue in the motion under
17 sub. (2), or the terms of the sentence, the commitment under ~~s. 971.17~~ subch. III of
18 ch. 975, or the disposition under ch. 938, would have been more favorable to the
19 movant if the results of deoxyribonucleic acid testing had been available before he
20 or she was prosecuted, convicted, found not guilty by reason of mental disease or
21 defect, or adjudicated delinquent for the offense.

22 **SECTION 1069.** 974.07 (9) (a) of the statutes is amended to read:

23 974.07 (9) (a) If a person other than the movant is in custody, as defined in s.
24 ~~968.205~~ 968.645 (1) (a), the evidence is relevant to the criminal, delinquency, or

1 commitment proceeding that resulted in the person being in custody, the person has
2 not been denied deoxyribonucleic acid testing or postconviction relief under this
3 section, and the person has not waived his or her right to preserve the evidence under
4 s. 165.81 (3), 757.54 (2), ~~968.205~~ 968.645, or 978.08, the court shall order the evidence
5 preserved until all persons entitled to have the evidence preserved are released from
6 custody, and the court shall designate who shall preserve the evidence.

7 **SECTION 1070.** 974.07 (10) (a) 4. of the statutes is amended to read:

8 974.07 (10) (a) 4. An order discharging the movant from custody, as defined in
9 s. ~~968.205~~ 968.645 (1) (a), if the movant is in custody.

10 **SECTION 1071.** 974.08 (title) of the statutes is created to read:

11 **974.08 (title) Defendant's presence at postconviction proceedings.**

12 **SECTION 1072.** 974.08 (1) of the statutes is created to read:

13 974.08 (1) A defendant has the right to be present at a postconviction
14 proceeding when the hearing will address substantial issues of fact as to events in
15 which the defendant participated and the defendant presents those issues through
16 more than mere allegations. 9/9

are supported by

17 **SECTION 1073.** 974.08 (2) and (3) of the statutes are created to read:

18 974.08 (2) A defendant need not be present at the pronouncement or entry of
19 an order granting or denying relief under s. 974.02, 974.03, 974.06, or 974.07. If the
20 defendant is not present, the time for appealing the order shall commence after a
21 copy has been served upon the defendant's counsel or, if he or she appeared without
22 counsel, upon the defendant, except as provided in sub. (3). Service of such an order
23 shall be complete upon mailing.

24 (3) A defendant appearing without counsel shall supply the court with his or
25 her current mailing address. If the defendant fails to supply the court with a current

1 and accurate mailing address, the defendant's failure to receive a copy of the order
2 granting or denying relief shall not be a ground for tolling the time in which an appeal
3 must be taken.

4 **SECTION 1074.** 974.09 (title) of the statutes is created to read:

5 **974.09 (title) Release pending appeal.**

6 **SECTION 1075.** Chapter 975 (title) of the statutes is repealed and recreated to
7 read:

8 **CHAPTER 975**

9 **MENTAL ISSUES IN CRIMINAL**
10 **PROCEEDINGS: COMPETENCY AND**
11 **RESPONSIBILITY**

12 **SECTION 1076.** 975.001 of the statutes is repealed.

13 **SECTION 1077.** 975.01 of the statutes is repealed.

14 **SECTION 1078.** 975.06 of the statutes is repealed.

15 **SECTION 1079.** 975.07 of the statutes is repealed.

16 **SECTION 1080.** 975.08 of the statutes is repealed.

17 **SECTION 1081.** 975.09 of the statutes is repealed.

18 **SECTION 1082.** 975.10 of the statutes is repealed.

19 **SECTION 1083.** 975.11 of the statutes is repealed.

20 **SECTION 1084.** 975.12 of the statutes is repealed.

21 **SECTION 1085.** 975.15 of the statutes is repealed.

22 **SECTION 1086.** 975.16 of the statutes is repealed.

23 **SECTION 1087.** 975.17 of the statutes is repealed.

24 **SECTION 1088.** 975.18 of the statutes is repealed.

1 **SECTION 1089.** Subchapter I (title) of chapter 975 [precedes 975.20] of the
2 statutes is created to read:

3 **CHAPTER 975**

4 **SUBCHAPTER I**

5 **GENERAL PROVISIONS**

6 **SECTION 1090.** 975.20 of the statutes is created to read:

7 **975.20 Definitions.** In this chapter:

8 (1) "Department" means the department of health services, except as otherwise
9 expressly provided.

10 (2) "Not competent to refuse medication or treatment" means that because of
11 mental illness, developmental disability, alcoholism, or drug dependency, and after
12 the advantages and disadvantages of and alternatives to accepting a particular
13 medication or treatment have been explained to a person, one of the following is true:

14 (a) The person is incapable of expressing an understanding of the advantages,
15 disadvantages, and alternatives.

16 (b) The person is substantially incapable of applying an understanding of the
17 advantages, disadvantages, and alternatives to his or her mental illness,
18 developmental disability, alcoholism, or drug dependence in order to make an
19 informed choice as to whether to accept or refuse medication or treatment.

20 (3) "Physician" has the meaning given in s. 448.01 (5).

21 (4) "Psychologist" means a person holding a valid license under s. 455.04.

22 **SECTION 1091.** Subchapter II (title) of chapter 975 [precedes 975.30] of the
23 statutes is created to read:

24 **CHAPTER 975**

25 **SUBCHAPTER II**

COMPETENCY

SECTION 1092. 975.31 (title) of the statutes is created to read:

975.31 (title) Raising the issue of competency.

SECTION 1093. 975.31 (2) of the statutes is created to read:

975.31 (2) (a) If reason to doubt a defendant's competency to proceed arises before judgment, the court shall not order an examination into competency until it has found that it is probable that the defendant committed the offense charged.

(b) The finding under par. (a) may be based upon the complaint and material providing the factual basis for the complaint, or, if the defendant submits an affidavit alleging with particularity that the averments of the complaint are materially false, upon the complaint and the evidence presented at a hearing ordered by the court. The defendant may call and cross-examine witnesses at a probable cause hearing under this section. If the court finds that it is probable that the defendant committed the offense charged, the court shall order an examination of the defendant under s. 975.32.

(c) If the court does not find that it is probable that the defendant committed the offense charged, the court shall dismiss the charge without prejudice and release the defendant.

SECTION 1094. 975.32 (title) of the statutes is created to read:

975.32 (title) Competency examination.

SECTION 1095. 975.32 (2) of the statutes is created to read:

975.32 (2) Notwithstanding sub. (1), if the parties agree that a previously conducted mental examination provides a sufficient basis for the court to make the determination under s. 975.34 and the court concurs, a new examination need not be ordered.

1 **SECTION 1096.** 975.32 (4) of the statutes is created to read:

2 975.32 (4) If the defendant is in custody, the court may order an inpatient or
3 outpatient examination and all of the following apply:

4 (a) Any outpatient examination for a defendant in custody shall be conducted
5 in a jail or locked unit of a facility.

6 (b) If an inpatient examination is determined by the court to be necessary for
7 a defendant in custody, the defendant may be committed to a suitable mental health
8 facility. If the examination is to be conducted by the department under par. (c), the
9 court shall order the individual to the facility designated by the department.

10 (c) If the court orders a defendant in custody to be examined by the department
11 or a department facility, the department shall determine where the examination will
12 be conducted, who will conduct the examination, and whether the examination will
13 be conducted on an inpatient or outpatient basis. If an outpatient examination is
14 begun by or through the department, and the department later determines that
15 inpatient examination is necessary, the sheriff shall transport the defendant to the
16 inpatient facility designated by the department. In any case under this paragraph
17 in which the department determines that an inpatient examination is necessary, the
18 15-day period under sub. (6) (a) begins upon the arrival of the defendant at the
19 inpatient facility.

20 **SECTION 1097.** 975.32 (7) of the statutes is created to read:

21 975.32 (7) Days spent in a mental health facility for an inpatient competency
22 examination ordered under this section count as days spent in custody under s.
23 973.155.

24 **SECTION 1098.** 975.32 (10) of the statutes is created to read:

1 975.32 (10) The court may order additional experts to examine the defendant
2 at any stage of the proceedings to determine the defendant's competency to proceed.

3 **SECTION 1099.** 975.33 (title) of the statutes is created to read:

4 **975.33 (title) Examination report.**

5 **SECTION 1100.** 975.33 (1) (f) of the statutes is created to read:

6 975.33 (1) (f) If the examiner reports that the defendant is not competent to
7 proceed and that the defendant is not likely to become competent within the
8 maximum period of commitment, as defined in s. 975.34 (6) (a), the examiner's
9 opinion on whether the defendant meets the criteria for commitment under ch. 51
10 or 55.

11 **SECTION 1101.** 975.34 of the statutes is created to read:

12 **975.34 Competency determination. (1) HEARING.** As soon as practicable
13 after receiving the examiner's report under s. 975.33, the court shall hold a hearing
14 on the defendant's competency to proceed and, if at issue, on the defendant's
15 competency to refuse medication or treatment.

16 **(2) WAIVER OF HEARING.** Notwithstanding sub. (1), if the parties agree that a
17 hearing is not necessary and the court concurs, the court may make a determination
18 on the defendant's competency to proceed and, if relevant, the defendant's
19 competency to refuse medication or treatment based on the court-ordered report and
20 other information adduced.

21 **(3) BURDEN OF GOING FORWARD.** If a hearing is held under this section, the
22 district attorney has the burden of going forward with the evidence.

23 **(4) BURDEN OF PERSUASION.** Regardless of who raised the issue of competency,
24 the court may find the defendant competent to proceed only if, after hearing evidence

1 or reviewing the reports submitted under s. 975.33, or both, the court finds by the
2 greater weight of the evidence that the defendant is competent to proceed.

3 (5) RESUMING PROCEEDINGS. If the court finds the defendant competent to
4 proceed, the court shall enter its finding on the record and shall resume the criminal
5 proceedings.

6 (6) SUSPENDING PROCEEDINGS; COMMITMENT FOR TREATMENT. (a) In this
7 subsection, "maximum period of commitment" means the greatest maximum
8 sentence length for any crime for which the defendant is charged, including
9 imprisonment authorized by any applicable penalty enhancement statutes, or 12
10 months, whichever is less.

11 (b) If the court does not find by the greater weight of the evidence that the
12 defendant is competent to proceed, the court shall find that the defendant is not
13 competent, shall enter its finding on the record, shall suspend the criminal
14 proceedings, and shall do one of the following:

15 1. If the court finds by the greater weight of the evidence that the defendant
16 is not likely to become competent within the maximum period of commitment, the
17 court shall order that the defendant be released, except as provided in s. 975.38.

18 2. If the court finds by the greater weight of the evidence that the defendant
19 is likely to become competent within the maximum period of commitment without
20 inpatient treatment, the court shall order that the defendant be released. The court
21 may require the defendant to participate in outpatient treatment, undergo periodic
22 reexaminations to determine whether the defendant has become competent to
23 proceed, or both, for a period that does not exceed the maximum period of
24 commitment.

1 3. If the court finds by clear and convincing evidence that the defendant is likely
2 to become competent within the maximum period of commitment if provided
3 appropriate inpatient treatment, proceed under sub. (7).

4 **(7) COMMITMENT FOR TREATMENT.**

5 **(8) COMPETENCY TO REFUSE MEDICATION OR TREATMENT.** If the defendant is
6 committed to the department under sub. (7) and the state proves by clear and
7 convincing evidence that the defendant is not competent to refuse medication or
8 treatment, the court shall find, without a jury, that the defendant is not competent
9 to refuse medication or treatment, and order that whoever administers medication
10 or treatment to the defendant shall observe appropriate medical standards.

11 **SECTION 1102.** 975.36 (title) of the statutes is created to read:

12 **975.36 (title) Reexamination of defendant's competency.**

13 **SECTION 1103.** 975.36 (2) of the statutes is created to read:

14 **975.36 (2) REPORTS AT OTHER TIMES.** The department shall furnish written
15 reports of examination to the court whenever it determines that the defendant has
16 become competent or that the defendant is not likely to become competent within the
17 remaining commitment period. The reports shall comply with the requirements of
18 sub. (1). The court shall schedule a review of a report under this subsection within
19 14 days after the court receives the report.

20 **SECTION 1104.** 975.36 (4) of the statutes is created to read:

21 **975.36 (4) FINAL REEXAMINATION.** Before or at the end of the commitment, the
22 court shall order the defendant discharged from the commitment and shall release
23 the defendant, except as provided in s. 975.38.

24 **SECTION 1105.** 975.37 of the statutes is created to read:

1 **975.37 Involuntary medication to restore competency at trial.** The
2 court may order involuntary medication to restore a defendant's competency to stand
3 trial only if the court finds that there is a need for that medication sufficiently
4 important to overcome the defendant's protected interest in refusing it. The court
5 shall consider the effectiveness and side effects of the medication, the possible
6 alternatives, and the medical appropriateness of the medication.

7 **SECTION 1106.** 975.38 (title) of the statutes is created to read:

8 **975.38 (title) Mental health commitment or protective placement.**

9 **SECTION 1107.** 975.39 of the statutes is created to read:

10 **975.39 Competency to pursue postconviction relief. (1) APPLICABILITY.**
11 The court shall proceed under this section whenever there is reason to doubt a
12 defendant's competency to seek postconviction relief under s. 809.30.

13 **(2) STANDARD.** A defendant lacks competency to pursue postconviction relief
14 under s. 809.30 if he or she is unable, with a reasonable degree of rational
15 understanding, to assist counsel or to make decisions committed by law to the
16 defendant.

17 **(3) DETERMINING COMPETENCY.** If the court determines that reason exists to
18 doubt a defendant's competency to pursue postconviction relief under s. 809.30, it
19 shall, as an exercise of its discretion, determine the method for evaluating a
20 defendant's competency. A court may rely upon the affidavits of counsel, a
21 stipulation, or the court's observation of the defendant. A court may order an
22 examination of the defendant by a person with specialized knowledge. A court may,
23 in its discretion, hold a hearing before determining a defendant's competency. Any
24 hearing conducted under this subsection shall be governed by s. 975.34 to the extent
25 practicable.

1 (4) ALTERNATIVES PENDING A COMPETENCY DETERMINATION. Pending a
2 determination of competency to pursue postconviction relief or after a finding that
3 the defendant lacks competency, the applicable court may do any of the following:

4 (a) The circuit court may allow the initiation or continuation of proceedings on
5 any issue raised by the defendant's attorney that rests on the records, does not
6 require the defendant to assist counsel or make a decision, and involves no risk to
7 the defendant.

8 (b) The court of appeals may grant the defendant a continuance or an
9 enlargement of time for filing necessary notices or motions for postconviction relief.

10 (5) APPOINTING A GUARDIAN; ORDERING TREATMENT. If the court finds that the
11 defendant lacks competency to pursue postconviction relief, the court may do any of
12 following:

13 (a) Appoint a guardian to make decisions that the law requires the defendant
14 to make.

15 (b) Order treatment to restore the defendant to competency to pursue
16 postconviction relief.

17 (6) RAISING ISSUES AFTER COMPETENCY IS REGAINED. A defendant who lacks
18 competency to pursue postconviction relief at the time he or she seeks postconviction
19 relief may, after regaining competency, raise any issue at a later proceeding that he
20 or she did not raise earlier because of incompetency.

21 **SECTION 1108.** Subchapter III (title) of chapter 975 [precedes 975.50] of the
22 statutes is created to read:

23 **CHAPTER 975**

24 SUBCHAPTER III

25 MENTAL RESPONSIBILITY

1 **SECTION 1109.** 975.51 (4) (b) of the statutes is created to read:

2 975.51 (4) (b) If a physician, psychologist, or other expert examines the
3 defendant at the request of the state, the examiner may not testify at trial regarding
4 the mental condition of the defendant unless the examiner provides a report of his
5 or her examination of the defendant to the defendant or defendant's attorney at least
6 15 days before trial.

7 **SECTION 1110.** 975.51 (5) (b) of the statutes is created to read:

8 975.51 (5) (b) A physician, psychologist, or other expert may not testify
9 regarding the defendant's need for medication or treatment or competence to refuse
10 medication or treatment before a jury that is determining the ability of the defendant
11 to appreciate the wrongfulness of his or her conduct or to conform his or her conduct
12 with the requirements of law at the time of the commission of the criminal offense
13 charged.

14 **SECTION 1111.** 975.52 (1) of the statutes is created to read:

15 975.52 (1) JOINED WITH A PLEA OF GUILTY OR NO CONTEST. If a defendant joins a
16 plea of guilty or no contest with a plea of not guilty by reason of mental disease or
17 defect, the court shall first determine whether to accept the plea of guilty or no
18 contest. If the plea is accepted, the court shall proceed under sub. (3).

19 **SECTION 1112.** 975.52 (4) (title) of the statutes is created to read:

20 975.52 (4) (title) ENTERING JUDGMENT.

21 **SECTION 1113.** 975.53 (title) of the statutes is created to read:

22 **975.53 Notice of restrictions.**

23 **SECTION 1114.** 975.54 (title) of the statutes is created to read:

24 **975.54 (title) Sexual assault; supervision, registration, and testing.**

25 **SECTION 1115.** 975.56 (title) of the statutes is created to read:

1 **975.56 (title) Precommitment examination.**

2 **SECTION 1116.** 975.57 (2) (e) of the statutes is created to read:

3 975.57 (2) (e) *Commitment credit.* A person committed under par. (a), (b), or
4 (d) shall be given credit for all days spent in custody in connection with the course
5 of conduct for which the commitment is imposed. The standards in s. 973.155 for
6 determining sentence credit for convicted persons apply to determining commitment
7 credit under this section.

8 **SECTION 1117.** 975.57 (3) of the statutes is created to read:

9 975.57 (3) INSTITUTIONALIZED CARE. If the court orders the person
10 institutionalized under this section, the department shall place the person in an
11 institution under s. 51.37 (3) that the department considers appropriate in light of
12 the rehabilitative services required by the person and the protection of public safety.

13 **SECTION 1118.** 975.57 (4) (title) of the statutes is created to read:

14 975.57 (4) (title) CONDITIONAL RELEASE.

15 **SECTION 1119.** 975.57 (4) (b) and (c) of the statutes are created to read:

16 975.57 (4) (b) An order for conditional release places the person in the custody
17 and control of the department. A conditionally released person is subject to the
18 conditions set by the court and to the rules of the department. The court, for cause
19 and by order, may modify the conditions of release.

20 (c) Before a person is conditionally released by the court under this subsection,
21 the court shall notify the municipal police department and county sheriff for the area
22 where the person will be residing. The notification requirement does not apply if a
23 municipal department or county sheriff submits to the court a written statement
24 waiving the right to be notified.

25 **SECTION 1120.** 975.57 (5) (title) of the statutes is created to read:

1 975.57 (5) (title) COMPETENCE TO REFUSE MEDICATION.

2 **SECTION 1121.** 975.59 (5) (title) of the statutes is created to read:

3 975.59 (5) (title) CONDITIONAL RELEASE.

4 **SECTION 1122.** 975.59 (5) (b) and (c) of the statutes are created to read:

5 975.59 (5) (b) An order for conditional release places the person in the custody
6 and control of the department. A conditionally released person is subject to the
7 conditions set by the court and to the rules of the department. The court, for cause
8 and by order, may modify the conditions of release.

9 (c) Before a person is conditionally released by the court under this subsection,
10 the court shall notify the municipal police department and county sheriff for the area
11 where the person will be residing. The notification requirement does not apply if a
12 municipal police department or county sheriff submits to the court a written
13 statement waiving the right to be notified.

14 **SECTION 1123.** 975.61 (1) (d) of the statutes is created to read:

15 975.61 (1) (d) The corporation counsel in the municipality and county in which
16 the commitment order was entered.

17 **SECTION 1124.** 975.62 (title) of the statutes is created to read:

18 **975.62 (title) Notice of change in status of committed person.**

19 **SECTION 1125.** 975.62 (1) (d) of the statutes is created to read:

20 975.62 (1) (d) "Victim's representative" means the victim or, if the victim died
21 as a result of the crime, an adult member of the victim's family, or, if the victim is
22 younger than 18 years old, the victim's parent or legal guardian.

23 **SECTION 1126.** 975.62 (2), (3) and (4) of the statutes are created to read:

24 975.62 (2) If the court conditionally releases a person under s. 975.57 (4) or
25 975.59, the district attorney who prosecuted the crime for which the person was

1 committed shall notify the department of corrections and make a reasonable attempt
2 to notify the victim's representative of the conditional release.

3 (3) If the court terminates a person's commitment order under s. 975.60 or
4 discharges a person under s. 975.61, the department shall notify the department of
5 corrections and, if the victim's representative has submitted a card under sub. (5),
6 the victim's representative of the termination or discharge.

7 (4) Notice under sub. (2) or (3) shall include the name of the person who is
8 conditionally released or discharged or whose commitment order is terminated and
9 the date of conditional release, termination, or discharge, whichever is applicable.
10 The district attorney or the department, whichever is applicable, shall send the
11 notice, postmarked no later than 7 days after the court orders the conditional release,
12 termination, or discharge, to the department of corrections and to the last-known
13 address of the victim's representative.

14 **SECTION 1127.** 975.63 (3) of the statutes is created to read:

15 975.63 (3) All hearings under ss. 975.55 to 975.61 shall be before a judge
16 without a jury.

17 **SECTION 1128.** 977.05 (4) (h) of the statutes is amended to read:

18 977.05 (4) (h) Accept requests for legal services from persons who are entitled
19 to be represented by counsel under s. 48.23, 51.60, 55.105, or 938.23 and from
20 indigent persons who are entitled to be represented by counsel under s. ~~967.06~~
21 971.013 or who are otherwise so entitled under the constitution or laws of the United
22 States or this state and provide such persons with legal services when, in the
23 discretion of the state public defender, such provision of legal services is appropriate.

24 **SECTION 1129.** 977.05 (4) (j) of the statutes is amended to read:

1 977.05 (4) (j) Subject to sub. (6) (e) and (f), at the request of any person
2 determined by the state public defender to be indigent or upon referral of any court,
3 prosecute a writ of error, appeal, action or proceeding for habeas corpus or other
4 postconviction or post-commitment remedy on behalf of the person before any court,
5 if the state public defender determines the case should be pursued. The state public
6 defender must pursue the case of any indigent person entitled to counsel under s.
7 971.17 (7) (b) 1. 975.63 (2) (a) or 980.03 (2) (a).

8 **SECTION 1130.** 977.05 (6) (b) 2. of the statutes is amended to read:

9 977.05 (6) (b) 2. The judge ~~or circuit court commissioner~~ before whom the
10 proceedings shall be held certifies to the state public defender that the person will
11 not be incarcerated if he or she is found in contempt of court.

12 **SECTION 1131.** 977.05 (6) (e) (intro.) and 2. of the statutes are amended to read:

13 977.05 (6) (e) (intro.) The state public defender may not provide legal services
14 or assign counsel for a person who files a motion to modify sentence under s. ~~973.19~~
15 974.03 (1) (a), or for a person who appeals, under s. ~~973.19 (4)~~ 974.03 (1) (d), the denial
16 of a motion to modify sentence filed under s. ~~973.19~~ 974.03 (1) (a), unless the person
17 does one of the following:

18 2. Files the motion to modify sentence under s. ~~973.19~~ 974.03 (1) (a) within 20
19 days after the sentence or order is entered.

20 **SECTION 1132.** 977.072 (title) of the statutes is created to read:

21 **977.072 (title) Transcript or court record; costs.**

22 **SECTION 1133.** 978.045 (1r) (intro.) of the statutes is amended to read:

23 978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the
24 record stating the cause for it, may appoint an attorney as a special prosecutor to
25 perform, for the time being, or for the trial of the accused person, the duties of the

1 district attorney. An attorney appointed under this subsection shall have all of the
2 powers of the district attorney. The judge may appoint an attorney as a special
3 prosecutor at the request of a district attorney to assist the district attorney in the
4 prosecution of persons charged with a crime, in grand jury proceedings ~~or, in~~ John
5 Doe proceedings under s. ~~968.26~~ 968.105, in proceedings under ch. 980, or in
6 investigations. The judge may appoint an attorney as a special prosecutor if any of
7 the following conditions exists:

8 **SECTION 1134.** 978.045 (1r) (i) of the statutes is amended to read:

9 978.045 (1r) (i) A judge determines that a complaint received under s. ~~968.26~~
10 968.105 (2) (am) relates to the conduct of the district attorney to whom the judge
11 otherwise would refer the complaint.

12 **SECTION 1135.** 978.05 (3) of the statutes is amended to read:

13 978.05 (3) JOHN DOE PROCEEDINGS. Participate in investigatory proceedings
14 under s. ~~968.26~~ 968.105.


15 **SECTION 1136.** 978.05 (4) of the statutes is amended to read:

16 978.05 (4) GRAND JURY. When requested by a grand jury under s. ~~968.47~~
17 968.225, attend the grand jury for the purpose of examining witnesses in their
18 presence; give the grand jury advice in any legal matter; draw bills of indictment; and
19 issue subpoenas and other processes to compel the attendance of witnesses.

20 **SECTION 1137.** 978.05 (6) (a) of the statutes is amended to read:

21 978.05 (6) (a) Institute, commence, or appear in all civil actions or special
22 proceedings under and perform the duties set forth for the district attorney under ch.
23 980 and ss. 17.14, 30.03 (2), 48.09 (5), 59.55 (1), 59.64 (1), 70.36, 103.50 (8), 103.92
24 (4), 109.09, 343.305 (9) (a), 453.08, 806.05, 938.09, 938.18, 938.355 (6) (b) and (6g) (a),
25 946.86, 946.87, 961.55 (5), ~~971.14~~ and 973.075 to 973.077 and subch. II of ch. 975,

1 perform any duties in connection with court proceedings in a court assigned to
2 exercise jurisdiction under chs. 48 and 938 as the judge may request and perform all
3 appropriate duties and appear if the district attorney is designated in specific
4 statutes, including matters within chs. 782, 976 and 979 and subch. I of ch. 968 and
5 ss. 51.81 to 51.85. Nothing in this paragraph limits the authority of the county board
6 to designate, under s. 48.09 (5), that the corporation counsel provide representation
7 as specified in s. 48.09 (5) or to designate, under s. 48.09 (6) or 938.09 (6), the district
8 attorney as an appropriate person to represent the interests of the public under s.
9 48.14 or 938.14.

* 
****NOTE: This section reconciles -0228/P2 and -4635/P1.

10 **SECTION 1138.** 978.06 (4) of the statutes is amended to read:

11 978.06 (4) No person who acted as district attorney, deputy district attorney
12 or assistant district attorney, or special prosecutor under s. 978.045, for a county at
13 the time of an arrest, examination or indictment of any person charged with a crime
14 in that county may thereafter appear for, or defend that person against the crime
15 charged in the complaint, ~~information~~ or indictment.

16 **SECTION 1139.** 978.08 (1) (a) and (b), (2), (2m), (3), (4) and (5) of the statutes are
17 amended to read:

18 978.08 (1) (a) "Custody" has the meaning given in s. ~~968.205~~ 968.645 (1) (a).

19 (b) "Discharge date" has the meaning given in s. ~~968.205~~ 968.645 (1) (b).

20 (2) Except as provided in sub. (3), if ~~physical evidence that is in the possession~~
21 of a district attorney ~~includes~~ possesses any biological material that was collected in
22 connection with a criminal investigation that resulted in a criminal conviction,
23 delinquency adjudication, or commitment under s. ~~971.17~~ subch. III of ch. 975 or s.
24 980.06 and the biological material is from a victim of the offense that was the subject

1 ~~of the criminal investigation or may reasonably be used to incriminate or exculpate~~
2 ~~any person for the offense~~, the district attorney shall preserve the ~~physical evidence~~
3 biological material until every person in custody as a result of the conviction,
4 adjudication, or commitment has reached his or her discharge date.

5 (2m) A district attorney shall retain ~~evidence~~ biological material to which sub.
6 (2) applies in an amount and manner sufficient to develop a deoxyribonucleic acid
7 profile, as defined in s. 939.74 (2d) (a), from ~~the biological material contained in or~~
8 ~~included on the evidence~~ it.

9 (3) Subject to sub. (5), a district attorney may destroy ~~evidence that includes~~
10 biological material before the expiration of the time period specified in sub. (2) if all
11 of the following apply:

12 (a) The district attorney sends a notice of its intent to destroy the ~~evidence~~
13 biological material to all persons who remain in custody as a result of the criminal
14 conviction, delinquency adjudication, or commitment and to either the attorney of
15 record for each person in custody or the state public defender.

16 (b) No person who is notified under par. (a) does either of the following within
17 90 days after the date on which the person ~~received~~ receives the notice:

18 1. Files a motion for testing of the ~~evidence~~ biological material under s. 974.07
19 (2).

20 2. Submits a written request ~~for retention of the evidence~~ to preserve the
21 biological material to the district attorney.

22 (c) No other provision of federal or state law requires the district attorney to
23 ~~retain the evidence~~ preserve the biological material.

24 (4) A notice provided under sub. (3) (a) shall clearly inform the recipient that
25 the ~~evidence~~ biological material will be destroyed unless, within 90 days after the

1 date on which the person receives the notice, either a motion for testing of the
2 evidence biological material is filed under s. 974.07 (2) or a written request for
3 ~~retention of the evidence~~ to preserve the biological material is submitted to the
4 district attorney.

5 (5) If, after providing notice under sub. (3) (a) of its intent to destroy evidence
6 biological material, a district attorney receives a written request for ~~retention of the~~
7 ~~evidence~~ to preserve biological material, the district attorney shall retain the
8 evidence biological material until the discharge date of the person who made the
9 request or on whose behalf the request was made, subject to a court order issued
10 under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court orders destruction or
11 transfer of the evidence biological material under s. 974.07 (9) (b) or (10) (a) 5.



****NOTE: This section reconciles -0228/P2 and -4635/P1.

12 SECTION 1140. 979.02 of the statutes is amended to read:

13 **979.02 Autopsies.** The coroner, medical examiner or district attorney may
14 order the conducting of an autopsy upon the body of a dead person any place within
15 the state in cases where an inquest might be had as provided in s. 979.04 968.015
16 notwithstanding the fact that no such inquest is ordered or conducted. The autopsy
17 shall be conducted by a licensed physician who has specialized training in pathology.
18 The district attorney may move the ~~circuit~~ court for the county in which the body is
19 buried for an order disinterring the body for purposes of autopsy. The order shall be
20 granted by the ~~circuit~~ court upon a reasonable showing that any of the criteria
21 specified in s. 979.04 968.015 exists. This section does not prevent additional
22 autopsies or examinations of the body if there are unanswered pathological
23 questions concerning the death and the causes of death.

24 SECTION 1141. 979.025 (1) of the statutes is amended to read:

1 979.025 (1) INMATE CONFINED TO AN INSTITUTION IN THIS STATE. If an individual
2 dies while he or she is in the legal custody of the department and confined to a
3 correctional facility located in this state, the coroner or medical examiner of the
4 county where the death occurred shall perform an autopsy on the deceased
5 individual. If the coroner or medical examiner who performs the autopsy determines
6 that the individual's death may have been the result of any of the situations that
7 would permit the district attorney to order an inquest under s. 979.04 968.015 (1),
8 the coroner or medical examiner shall follow the procedures under s. 979.04 968.015
9 (2).

10 **SECTION 1142.** 979.025 (2) of the statutes is amended to read:

11 979.025 (2) INMATE CONFINED IN AN INSTITUTION IN ANOTHER STATE. If an
12 individual dies while he or she is in the legal custody of the department and confined
13 to a correctional facility in another state under a contract under s. 301.07, 301.21,
14 or 302.25, the department shall have an autopsy performed by an appropriate
15 authority in the other state or by the coroner or medical examiner of the county in
16 which the circuit court is located that sentenced the individual to the custody of the
17 department. If the coroner or medical examiner who performs the autopsy in this
18 state determines that the individual's death may have been the result of any of the
19 situations that would permit the district attorney to order an inquest under s. 979.04
20 968.015 (1), the coroner or medical examiner shall forward the results of the autopsy
21 to the appropriate authority in the other state.

22 **SECTION 1143.** 979.04 of the statutes is renumbered 968.015 and amended to
23 read:

24 **968.015 Inquests: when When inquests may be called.** (1) If the district
25 attorney has notice of the death of any person and there is reason to believe from the

1 circumstances surrounding the death that the person was a victim of felony murder,
2 first-degree or 2nd-degree intentional homicide, first-degree or 2nd-degree
3 reckless homicide, homicide by negligent handling of dangerous weapon, explosives,
4 or fire, homicide by negligent operation of vehicle, homicide resulting from negligent
5 control of a vicious animal ~~or~~, homicide by intoxicated user of a vehicle or firearm ~~may~~
6 ~~have been committed, or that death may have been due to suicide or~~ the person died
7 under unexplained or suspicious circumstances, the district attorney may order that
8 an inquest be conducted for the purpose of inquiring how the person died. The
9 ~~district attorney shall appear in any such inquest representing the state in~~
10 ~~presenting all evidence which may be relevant or material to the inquiry of the~~
11 ~~inquest. The inquest may be held in any county in this state in which venue would~~
12 ~~lie for the trial of any offense charged as the result of or involving the death.~~

13 (4) An inquest may ~~only~~ be ordered only by the district attorney acting under
14 ~~this subsection sub. (1)~~ or by the circuit judge under sub. (2).

15 (2) If the coroner or medical examiner ~~has knowledge of the death of any~~ knows
16 that a person has died in the manner or under the circumstances described under in
17 sub. (1), he or she ~~shall immediately notify the district attorney. The notification~~
18 ~~shall include information concerning the circumstances surrounding the death. The~~
19 ~~coroner or medical examiner~~ may request the district attorney to order an inquest
20 under sub. (1). If the district attorney refuses to order the inquest, ~~a~~ the coroner
21 or medical examiner may petition the ~~circuit~~ court to order an inquest. The court
22 may issue the order if it finds that the district attorney has abused his or her
23 discretion in not ordering an inquest.

24 (3) ~~Subsequent to receipt of~~ After receiving notice of the death, the district
25 attorney may request the coroner or medical examiner to conduct a preliminary

1 investigation and report back to the district attorney. The district attorney may
2 determine the scope of the preliminary investigation. This subsection does not limit
3 or prevent any other investigation into the death by any law enforcement agency
4 with jurisdiction over the investigation.

X ***NOTE: This section reconciles -0228/P2 and -3257/P2.

5 SECTION 1144. 979.05 (title) of the statutes is repealed.

6 SECTION 1145. 979.05 (1) of the statutes is renumbered 968.025 (1) and
7 amended to read:

8 968.025 (1) BY WHOM CONDUCTED. ~~An inquest shall be conducted by a circuit A~~
9 ~~judge or a circuit court commissioner shall conduct each inquest.~~

10 SECTION 1146. 979.05 (2) of the statutes is renumbered 968.025 (2) and
11 amended to read:

12 968.025 (2) BEFORE WHOM CONDUCTED. The inquest shall be conducted before
13 a jury unless the district attorney, coroner, or medical examiner requests that the
14 inquest be conducted before the judge ~~or circuit court commissioner~~ only.

15 (4) (a) If the inquest is to be conducted before a jury, the clerk shall select, in
16 the manner provided in s. 756.06 (1), a sufficient number of names of prospective
17 jurors ~~shall be selected from the prospective juror list for the county in which the~~
18 ~~inquest is to be held by the clerk of circuit court in the manner provided in s. 756.06.~~
19 ~~The judge or circuit court commissioner conducting the inquest shall summon the~~
20 ~~prospective jurors to appear before the judge or circuit court commissioner at the~~
21 ~~time fixed in the summons. The summons may be served by mail, or by personal~~
22 ~~service if the judge, circuit court commissioner, or district attorney determines~~
23 ~~personal service to be appropriate. The summons shall be in the form used to~~
24 ~~summon petit jurors in the circuit courts of the county.~~

to ensure that
the jury
consists of 6
members

1 (b) Any person who fails to appear when summoned as an inquest juror is
2 ~~subject to a forfeiture of~~ shall forfeit not more than \$40. ~~The inquest jury shall consist~~
3 ~~of 6 jurors. If 6 jurors do not remain~~

4 (d) If, after all prospective jurors have been examined, fewer than 12 remain
5 from the number originally summoned ~~after establishment of qualifications, the~~
6 judge ~~or circuit court commissioner~~ conducting the inquest ~~may require~~ shall direct
7 the clerk ~~of the circuit court to select~~ to draw sufficient additional jurors' names.
8 ~~Those persons shall be summoned forthwith by the~~ The sheriff of the county shall
9 summon those persons immediately.



****NOTE: This section reconciles -0228/P2 and -3257/P2.

10 SECTION 1147. 979.05 (3) of the statutes is renumbered 968.025 (4) (c) and
11 amended to read:

12 968.025 (4) (c) The judge ~~or circuit court commissioner~~ shall examine on oath
13 or affirmation each person who is called as a juror to discover whether the juror is
14 related by blood, or marriage ~~or adoption~~ to the decedent, any member of the
15 decedent's family, the district attorney, any other attorney appearing in the case, or
16 any members of the office of the district attorney or of the office of any other attorney
17 appearing in the case, has expressed or formed any opinion regarding the matters
18 being inquired into in the inquest, or is aware of or has any bias or prejudice
19 concerning the matters being inquired into in the inquest. ~~If any prospective juror~~
20 ~~is found~~ The court shall excuse any prospective juror whom it finds to be not
21 indifferent or ~~is found~~ to have formed an opinion ~~which~~ that cannot be laid aside, ~~that~~
22 juror shall be excused. ~~The judge or circuit commissioner may select one or more~~
23 alternate jurors if the inquest is likely to be protracted. This subsection paragraph

1 does not limit the right of the district attorney to supplement the judge's ~~or circuit~~
2 ~~commissioner's~~ examination of any prospective jurors as to qualifications.

* ****NOTE: This section reconciles -0228/P2 and -3257/P2.

3 **SECTION 1148.** 979.05 (4) of the statutes is renumbered 968.025 (5) and
4 amended to read:

5 968.025 (5) OATH. ~~When~~ 6 After the jurors have been selected, the judge ~~or~~
6 ~~circuit court commissioner~~ shall administer to them an oath or affirmation which
7 shall be substantially in the following form:

8 You do solemnly swear (affirm) that you will diligently inquire and determine
9 on behalf of this state when, and in what manner and by what means, the person
10 known as ~~who is now dead~~ came to his or her death and that you will return
11 a true verdict thereon according to your knowledge, according to the evidence
12 presented, and according to the instructions given to you by the (judge) (circuit
13 court commissioner).

* ****NOTE: This section reconciles -0228/P2 and -3257/P2.

14 **SECTION 1149.** 979.05 (5), (6) and (7) of the statutes are renumbered 968.025
15 (6), (7) and (8) and amended to read:

16 968.025 (6) ROLE OF DISTRICT ATTORNEY. ~~Prior to the submission of evidence to~~
17 ~~the jury, the judge or circuit court commissioner may instruct the jury on its duties~~
18 ~~and on the substantive law regarding the issues which may be inquired into before~~
19 ~~the jury~~ The district attorney shall appear in each inquest, represent the state, and
20 present all evidence that may be relevant or material to the inquiry of the inquest.

21 The district attorney may, at any time during the course of the inquest, make
22 statements to the jury relating to procedural or evidentiary matters he or she and

1 the judge ~~or circuit court commissioner~~ deem appropriate. Section 972.12 applies to
2 the conduct of the inquest jury.

3 (7) SECURITY AND SEQUESTRATION. The judge ~~or circuit court commissioner~~
4 conducting the inquest may order that proceedings be secret if the district attorney
5 so requests or concurs and may sequester the inquest jury under s. 972.05.

6 (8) JUROR COMPENSATION. Inquest jurors shall receive the same compensation
7 as jurors under s. 756.25.

* ****NOTE: This section reconciles -0228/P2 and -3257/P2.

8 SECTION 1150. 979.06 (title), (1), (2) and (5) of the statutes are repealed.

* ****NOTE: This section reconciles -0228/P2 and -3257/P2.

9 SECTION 1151. 979.06 (3), (4) and (6) of the statutes are renumbered 968.035
10 (1), (2) and (3), and 968.035 (1) and (2), as renumbered, are amended to read:

11 968.035 (1) Any witness examined at an inquest may have counsel present
12 during the examination of that witness. The counsel may consult with a client during
13 the examination of that client. The counsel may not examine or cross-examine his
14 or her client, cross-examine or call other witnesses, or argue before the judge ~~or~~
15 ~~circuit court commissioner~~ holding the inquest.

16 (2) The judge ~~or circuit court commissioner~~ shall administer an oath or
17 affirmation to each witness ~~which shall be substantially in the following form:~~

18 ~~You do solemnly swear (affirm) that the evidence and testimony you give to this~~
19 ~~inquest concerning the death of the person known as shall be the truth, the~~
20 ~~whole truth and nothing but the truth and shall cause the testimony given by all~~
21 ~~witnesses to be reduced to writing or recorded.~~

* ****NOTE: This section reconciles -0228/P2 and -3257/P2.

22 SECTION 1152. 979.07 of the statutes is repealed.

* ****NOTE: This section reconciles -0228/P2 and -3257/P2.

1 **SECTION 1153.** 979.08 (title) of the statutes is renumbered 968.055 (title).

2 **SECTION 1154.** 979.08 (1) of the statutes is renumbered 968.055 (1) and
3 amended to read:

4 968.055 (1) ~~When the~~ Before submitting evidence is concluded and the
5 testimony closed ~~to the jury in an inquest~~, the judge ~~or circuit court commissioner~~
6 shall may instruct the jury on its duties and on the substantive law regarding the
7 issues that may be inquired into before the jury. The

8 (2) After all of the evidence is presented, the district attorney shall prepare a
9 ~~written set of appropriate requested instructions and shall submit them to the judge~~
10 ~~or circuit court commissioner who, together with the district attorney, a written set~~
11 ~~of proposed instructions on the jury's duties and on the substantive law regarding~~
12 ~~the issues inquired into before the jury. The judge shall compile the final set of~~
13 ~~instructions which shall be given. The instructions shall include those instructions~~
14 ~~for criminal offenses for which the judge or circuit court commissioner believes a~~
15 ~~reasonable jury might return a verdict based upon a finding of probable cause. The~~
16 ~~judge shall use the final instructions to instruct the jury and shall provide the jury~~
17 ~~with one complete set of them.~~

18 **SECTION 1155.** 979.08 (2) of the statutes is repealed.

19 **SECTION 1156.** 979.08 (3) (intro.) and (4) of the statutes are consolidated,
20 renumbered 968.055 (3) (intro.) and amended to read:

21 968.055 (3) (intro.) The jury shall retire to consider its verdict after hearing all
22 of the testimony and evidence, making all necessary inquiries, and having been
23 instructed in the law. ~~The judge or circuit court commissioner shall provide the jury~~
24 ~~with one complete set of written instructions providing the substantive law to be~~
25 ~~applied to the issues to be decided. The verdict shall be in a form which permits the~~

1 following findings: (4) The jury shall render its verdict shall be based upon a finding
2 of probable cause, be unanimous, and be rendered in writing, signed by all of its
3 members of the jury. The verdict shall set forth its the jury's findings from the
4 evidence produced according to the instructions. The verdict shall be in a form that
5 permits the following findings:

6 **SECTION 1157.** 979.08 (3) (a) of the statutes is renumbered 968.055 (3) (b) and
7 amended to read:

8 968.055 (3) (b) Whether the deceased ~~came to his or her death by criminal~~
9 means died as a result of a crime and, if so, the specific crimes committed and the
10 name of the person or persons, if known, ~~having~~ who committed the crimes.

11 **SECTION 1158.** 979.08 (3) (b) of the statutes is renumbered 968.055 (3) (a) and
12 amended to read:

13 968.055 (3) (a) Whether the deceased came to his or her death by natural
14 causes, accident, suicide, or an act privileged by law.

15 **SECTION 1159.** 979.08 (5) of the statutes is renumbered 968.055 (4) and
16 amended to read:

17 968.055 (4) The inquest jury's verdict delivered by the inquest jury is advisory
18 and does not preclude or require the issuance of any criminal charges by the district
19 attorney. ~~Any~~

20 (5) After accepting the verdict so rendered, after being validated and signed by,
21 the judge or circuit court commissioner, together with the record of the inquest, shall
22 cause it to be delivered, as well as the record of the inquest, to the district attorney
23 for consideration. After considering the verdict and record, the district attorney may
24 deliver the entire inquest record or any part thereof of the inquest record to the
25 coroner or medical examiner for safekeeping.

1 **SECTION 1160.** 979.08 (6) of the statutes is repealed.

 ****NOTE: Please review this repeal.

2 **SECTION 1161.** 979.08 (7) of the statutes is renumbered 968.055 (6) and
3 amended to read:

4 968.055 (6) The Except as provided in s. 971.43, the record of a secret inquest
5 proceeding ~~shall~~ ^{is} not be open for inspection unless so ordered by the judge or circuit
6 court commissioner conducting the inquest upon petition by the district attorney.

* ****NOTE: Is this the correct cross-reference?

7 **SECTION 1162.** 979.09 of the statutes is amended to read:

8 **979.09 Burial of body.** If any judge or circuit court commissioner conducts
9 an inquest as to the death of a stranger or of a person whose identity is unknown or
10 whose body is unclaimed or if the district attorney determines that no inquest into
11 the death of such a person is necessary and the circuit judge has not ordered an
12 inquest under s. ~~979.04~~ 968.015 (2), the coroner or medical examiner shall cause the
13 body to be decently buried or cremated and shall certify to all the charges incurred
14 in taking any inquest by him or her and to the expenses of burial or cremation of the
15 dead body. The charges and expenses shall be audited by the county board of the
16 proper county and paid out of the county treasury.

* ****NOTE: This section reconciles -0228/P2 and -3257/P2.

17 **SECTION 1163.** 979.10 (2) of the statutes is amended to read:

18 979.10 (2) If a corpse is to be cremated, the coroner or medical examiner shall
19 make a careful personal inquiry into the cause and manner of death, and conduct an
20 autopsy or order the conducting of an autopsy, if in his or her or the district attorney's
21 opinion it is necessary to determine the cause and manner of death. If the coroner
22 or medical examiner determines that no further examination or judicial inquiry is

1 necessary he or she shall certify that fact. Upon written request by the district
2 attorney the coroner or medical examiner shall obtain the concurrence of the district
3 attorney before issuing the certification. If the coroner or medical examiner
4 determines that further examination or judicial inquiry is necessary, he or she shall
5 notify the district attorney under s. ~~979.04~~ 968.015 (2).

6 **SECTION 1164.** 979.11 of the statutes is amended to read:

7 **979.11 Compensation of officers.** The sole compensation of the coroner and
8 deputy coroners for attendance at an inquest and for any preliminary investigation
9 under ~~this chapter ch. 968~~ at the direction of the district attorney shall be a
10 reasonable sum set by the county board for each day actually and necessarily
11 required for the purpose, and a sum set by the county board for each mile actually
12 and necessarily traveled in performing the duty. Any coroner or deputy coroner may
13 be paid an annual salary and allowance for traveling expenses to be established by
14 the county board under s. 59.22 which shall be in lieu of all fees, per diem, and
15 compensation for services rendered.

16 **SECTION 1165.** 979.22 of the statutes is amended to read:

17 **979.22 Autopsies and toxicological services by medical examiners.** A
18 medical examiner may perform autopsies and toxicological services not required
19 under this chapter or under subch. I of ch. 968 and may charge a fee established by
20 the county board for such autopsies and services. The fee may not exceed an amount
21 reasonably related to the actual and necessary cost of providing the service.

22 **SECTION 1166.** 980.015 (2) (c) of the statutes is amended to read:

23 980.015 (2) (c) The anticipated release of a person on conditional release under
24 s. ~~971.17~~ 975.57 (4) or 975.59, the anticipated termination of a commitment order
25 under ~~971.17~~ s. 975.60, or the anticipated discharge of a person from a commitment

1 order under s. ~~971.17~~ 975.61, if the person has been found not guilty of a sexually
2 violent offense by reason of mental disease or defect.

3 **SECTION 1167.** 980.015 (2) (d) of the statutes is amended to read:

4 980.015 (2) (d) The anticipated release on parole or discharge of a person
5 committed under ch. 975, ~~2009~~ ²⁰¹¹ stats., for a sexually violent offense.

6 **SECTION 1168.** 980.031 (4) of the statutes is amended to read:

7 980.031 (4) If a party retains or the court appoints a licensed physician,
8 licensed psychologist, or other mental health professional to conduct an examination
9 under this chapter of the person's mental condition, the examiner shall have
10 reasonable access to the person for the purpose of the examination, as well as to the
11 person's past and present treatment records, as defined in s. 51.30 (1) (b), and patient
12 health care records as provided under s. 146.82 (2) (cm), past and present juvenile
13 records, as provided under ss. 48.396 (6), 48.78 (2) (e), 938.396 (10), and 938.78 (2)
14 (e), and the person's past and present correctional records, including presentence
15 investigation reports under s. ~~972.15~~ 973.004 (6).

16 **SECTION 1169.** 980.036 (2) (c) of the statutes is amended to read:

17 980.036 (2) (c) Evidence obtained in the manner described under s. ~~968.31~~
18 968.345 (2) (b), if the prosecuting attorney intends to use the evidence at the trial or
19 proceeding.

20 **SECTION 1170.** 980.036 (6) of the statutes is amended to read:

21 980.036 (6) PROTECTIVE ORDER. Upon motion of a party, the court may at any
22 time order that discovery, inspection, or the listing of witnesses required under this
23 section be denied, restricted, or deferred, or make other appropriate orders. If the
24 prosecuting attorney or the attorney for a person subject to this chapter certifies that
25 listing a witness under sub. (2) (e) or (3) (a) may subject the witness or others to

1 physical or economic harm or coercion, the court may order that the deposition of the
2 witness be taken under s. ~~967.04 (2) to (6)~~ 967.21. The name of the witness need not
3 be divulged prior to the taking of such deposition. If the witness becomes unavailable
4 or changes his or her testimony, the deposition shall be admissible at trial as
5 substantive evidence.

6 **SECTION 1171.** 990.01 (23) of the statutes is amended to read:

7 990.01 (23) NIGHTTIME. "Nighttime," used in any statute, ordinance,
8 indictment or ~~information~~ complaint, means the time between one hour after sunset
9 on one day and one hour before sunrise on the following day; and the time of sunset
10 and sunrise shall be ascertained according to the mean solar time of the ninetieth
11 meridian west from Greenwich, commonly known as central time, as given in any
12 almanac.

13 **SECTION 1172.** 995.50 (7) of the statutes is amended to read:

14 995.50 (7) No action for invasion of privacy may be maintained under this
15 section if the claim is based on an act which is permissible under ~~ss. s.~~ 196.63 or
16 ~~968.27 to 968.37~~ under subch. IV of ch. 968.

17 **SECTION 1173. Initial applicability.**

18 (1) This act first applies to prosecutions commenced on the effective date of this
19 subsection.

20 (2) This act first applies to proceedings, commitments, and requirements
21 related to offenses committed on the effective date of this subsection.

22

(END)

123

359-22

of note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0031/p1dn
PJH&CMH/.....

js

date -

written

as remembered
in the bill

For instance

331

This version brings in current law for the sections affected by 2011 acts and makes most of the changes requested on the memo. These tasks created some new provisions for you to review while we incorporate the other changes requested. In sum, we have not ~~done~~ the analysis or provided titles in chapter 968 (the latter will require some file searching and we wanted to get this version to you soon). Please review ss. 968.29 ³²⁵ and 968.30; we removed any stylistic changes not clearly permissible in s. 13.92 (1) (bm), but we did retain any changes that make the introduction and provisions following from the introduction consistent with current drafting style. We left those in as the revising attorney will make them (under s. 13.92 (1) (bm) authority) after the bill passes so it is better if we leave them in so you can review them rather than adding them later without your review.

Please review s. 968.645 ^m although I would have to look at the file because these provisions predate my involvement, I believe that most of the changes were incorporated per the department and law enforcement agencies. "Physical evidence" seemed to include the whole item whereas "biological material" included only the material needed. In other words, the department and the law enforcement agencies thought that current law would require preservation of an entire couch or car if biological material were found on a cushion or a carseat. The changes would require preserving only the material necessary. I will look into the drafting file for further information if you would like.

332

The cross-references to bail and bond are not necessary in section 969.30 ^{A note} because they are defined in s. 967.02 and apply to chs. 967 to 979. ~~The cross-reference~~ directing the reader to those definitions can be found at the beginning of ch. 969. _{in the statutes}

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**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0031/plinch2
CMH:.....

1 Insert 28-25

2 **SECTION ~~4~~** 51.42 (3) (aw) 1. d. of the statutes is amended to read:

3 51.42 (3) (aw) 1. d. Provide treatment and services that are specified in a
4 conditional release plan approved by a court for a person who is a county resident and
5 is conditionally released under s. ~~971.17 (3) or (4)~~ 975.57 (4) or 975.59 or that are
6 specified in a supervised release plan approved by a court under s. 980.06 (2) (c), 1997
7 stats., s. 980.08 (5), 2003 stats., or s. 980.08 (4) (g). If the county department provides
8 treatment and services under this subdivision, the department of health services
9 shall, from the appropriation under s. 20.435 (2) (bj), pay the county department for
10 the costs of the treatment and services.

History: 1971 c. 125; 1973 c. 90, 198, 333, 336; 1975 c. 39, 198, 199, 224, 422; 1975 c. 428 s. 16; 1975 c. 430 ss. 24 to 31, 80; 1977 c. 26 ss. 37, 38, 75; 1977 c. 29 ss. 612 to 623p, 1656 (18); 1977 c. 193; 1977 c. 203 s. 106; 1977 c. 272; 1977 c. 354 s. 101; 1977 c. 418, 428, 447; 1979 c. 34, 117, 177, 221, 330, 355; 1981 c. 20 ss. 923 to 942, 2202 (20) (d), (n), (q); 1981 c. 93 ss. 105 to 122, 186; 1981 c. 329; 1983 a. 27 ss. 1106 to 1112, 2202 (20); 1983 a. 189 ss. 44, 329 (5); 1983 a. 192, 239, 365, 375, 524; 1985 a. 29, 120, 176; 1987 a. 3, 27, 199, 339, 366; 1989 a. 31, 122; 1991 a. 39, 274, 315; 1993 a. 16, 437, 445; 1995 a. 27 ss. 3260 to 3262, 9126 (19), 9145 (1); 1995 a. 64, 77, 92, 201, 224, 276, 352, 417; 1997 a. 27, 164, 237, 268; 1999 a. 9; 2001 a. 10, 16, 38; 2003 a. 320; 2005 a. 264, 388, 431, 434; 2007 a. 20 ss. 1819m to 1821, 9121 (6) (a); 2007 a. 45, 97; 2009 a. 28, 180, 276, 334; 2011 a. 32, 126.

11
12 Insert 36-25

13 **SECTION ~~4~~** 103.10 (1m) (b) 1. of the statutes is amended to read:

14 103.10 (1m) (b) 1. "Domestic abuse" has the meaning given in s. ~~968.075~~ 969.27

15 (1) (a).

16 **History:** 1987 a. 287; 1989 a. 228; 1991 a. 39; 1993 a. 446; 1995 a. 27 s. 9130 (4); 1997 a. 3, 156; 2001 a. 74; 2003 a. 33; 2009 a. 28; 2011 a. 16.

17
18 Insert 46-17

19 **SECTION ~~4~~** 175.60 (3) (d) of the statutes is amended to read:

20 175.60 (3) (d) The court has prohibited the individual from possessing a
21 dangerous weapon under s. ~~969.02 (3) (c) or 969.03 (1) (c)~~ 969.33 (5) (b).

History: 2011 a. 35; s. 13.92 (1) (bm) 2.

↘

1 **SECTION ~~175.60~~** 175.60 (3) (dm) of the statutes is created to read:

2 175.60 (3) (dm) A district attorney has prohibited the individual from
3 possessing a dangerous weapon under s. 969.25 (2) (d).

4 **SECTION ~~175.60~~** 175.60 (3) (e) of the statutes is amended to read:

5 175.60 (3) (e) The individual is on release under s. ~~969.01~~ 969.31 and the
6 individual may not possess a dangerous weapon as a condition of the release.

History: 2011 a. 35; s. 13.92 (1) (bm) 2.

7 **SECTION ~~175.60~~** 175.60 (9g) (a) 2. of the statutes is amended to read:

8 175.60 (9g) (a) 2. The department shall conduct a criminal history record
9 search and shall search its records and conduct a search in the national instant
10 criminal background check system to determine whether the applicant is prohibited
11 from possessing a firearm under federal law; whether the applicant is prohibited
12 from possessing a firearm under s. 941.29; whether the applicant is prohibited from
13 possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant
14 has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1.,
15 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction
16 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued
17 by a court established by any federally recognized Wisconsin Indian tribe or band,
18 except the Menominee Indian tribe of Wisconsin, that includes notice to the
19 respondent that he or she is subject to the requirements and penalties under s.
20 941.29 and that has been filed with the circuit court under s. 806.247 (3); and
21 whether the applicant is prohibited from possessing a firearm under s. 813.125 (4m);
22 and to determine if the court has prohibited the applicant from possessing a
23 dangerous weapon under s. ~~969.02 (3) (e)~~ [✓] or ~~969.03 (1) (e)~~ [✓] 969.33 (5) (b), [✓] if a district
24 attorney has prohibited the individual from possessing a dangerous weapon under

s. 969.25 (2) (d), and if the applicant is prohibited from possessing a dangerous weapon as a condition of release under s. ~~969.01~~ 969.31.

History: 2011 a. 35; s. 13.92 (1) (bm) 2.

SECTION ~~10~~ 175.60 (11) (a) 2. b. of the statutes is amended to read:

175.60 (11) (a) 2. b. The individual is found incompetent under s. ~~971.14~~ 975.33

(6) (b)

****NOTE: Please review this cross-reference.

History: 2011 a. 35; s. 13.92 (1) (bm) 2.

SECTION ~~10~~ 175.60 (11) (a) 2. c. of the statutes is amended to read:

175.60 (11) (a) 2. c. The individual is found not guilty of any crime by reason of mental disease or mental defect under s. ~~971.17~~.

History: 2011 a. 35; s. 13.92 (1) (bm) 2.

SECTION ~~10~~ 175.60 (11) (a) 2. g. of the statutes is amended to read:

175.60 (11) (a) 2. g. A court has prohibited the individual from possessing a dangerous weapon under s. ~~969.02 (3) (c)~~ or ~~969.03 (1) (c)~~ 969.33 (5) (b).

History: 2011 a. 35; s. 13.92 (1) (bm) 2.

SECTION 10. 175.60 (11) (a) 2. gm. of the statutes is created to read:

175.60 (11) (a) 2. gm. A district attorney has prohibited the individual from possessing a dangerous weapon under s. 969.25 (2) (d).

SECTION ~~11~~ 175.60 (11) (a) 2. i. of the statutes is amended to read:

175.60 (11) (a) 2. i. The individual is on release under s. ~~969.01~~ 969.31 and the individual may not possess a dangerous weapon as a condition of the release.

History: 2011 a. 35; s. 13.92 (1) (bm) 2.

SECTION ~~11~~ 175.60 (14) (am) of the statutes is amended to read:

175.60 (14) (am) The department shall suspend a license issued under this section if a court has prohibited the licensee from possessing a dangerous weapon under s. ~~969.02 (3) (c)~~ or ~~969.03 (1) (c)~~ 969.33 (5) (b) or if a district attorney has prohibited the licensee from possessing a dangerous weapon under s. 969.25 (2) (d).

1 If the individual whose license was suspended is no longer subject to the prohibition
2 under s. ~~969.02 (3) (c)~~ ✓ or ~~969.03 (1) (e)~~ ✓ 969.25 (2) (d) ✓ or 969.33 (5) (b) ✓, whichever is
3 applicable, sub. (3) (b), (c), (d), (e), (f), or (g) does not apply to the individual, and the
4 suspended license would not have expired under sub. (15) (a) had it not been
5 suspended, the department shall restore the license within 5 business days of
6 notification that the licensee is no longer subject to the prohibition.

7 History: 2011 a. 35; s. 13.92 (1) (bm) 2.

8 Insert 89-3

9 SECTION ~~14~~ 948.015 (9) of the statutes is amended to read:

10 948.015 (9) A crime that involves an act of domestic abuse, as defined in s.
11 ~~968.075~~ 969.27 ✓ (1) (a), if the court includes in its reasoning under s. 973.017 (10m)
12 for its sentencing decision the aggravating factor under s. 973.017 (6m).

13 History: 1987 a. 332; 1989 a. 31; 1993 a. 27; 1995 a. 448; 2005 a. 263; 2011 a. 273.

14 Insert 123-23

15 *****NOTE: We did not change proposed s. 969.50 to provide bench warrants for
witnesses because, without more review, we thought such changes would be redundant
given s. 967.20 and the matter does not seem to fit in chapter 969, which is titled "Securing
a Defendant's Appearance." Could you review both the changes proposed in your memo
and s. 967.20 (Section 347) and then advise us what you would like?

16 Insert 125-13

17 *****NOTE: "Property of kinds of property" does not seem to include "people" if they
are to be seized per the search warrant. I'm not sure if "things" did either, but should a
broader term be used here?

18 Insert 272-9

19 SECTION ~~14~~ 971.23 (11) of the statutes is renumbered 971.515, and 971.515 (1)
20 (intro.) and (a), (3) (a) and (b) and (4), as renumbered, are amended to read:
971.515 (1) (intro.) In this subsection section ✓:

1 (a) "Defense" means the defendant, his or her attorney, and any individual
2 retained by the defendant or his or her attorney for the purpose of providing
3 testimony if the testimony is expert testimony that relates to an item or material
4 included under ~~par. (b)~~ sub. (2). ✓

5 (3) (a) Notwithstanding ~~sub. (1) (e) and (g)~~ s. 971.43 (2) (j), ✓ a court shall deny
6 any request by the defense to provide, and a district attorney or law enforcement
7 agency may not provide to the defense, any item or material required in ~~par. (b)~~ sub.
8 (2) ✓ to remain in the possession, custody, and control of a law enforcement agency or
9 court, except that a court may order that a copy of an item or material included under
10 ~~par. (b)~~ sub. (2) ✓ be provided to the defense if that court finds that a copy of the item
11 or material has not been made reasonably available to the defense. The defense shall
12 have the burden to establish that the item or material has not been made reasonably
13 available.

14 (b) If a court orders under ~~subd. 1.~~ par. (a) ✓ a copy of an item or material included
15 under ~~par. (b)~~ sub. (2) ✓ to be provided to the defense, the court shall enter a protective
16 order under ~~sub. (6)~~ s. 971.52 (1) ✓ that includes an order that the copy provided to the
17 defense may not be copied, printed, or disseminated by the defense and shall be
18 returned to the court or law enforcement agency, whichever is appropriate, at the
19 completion of the trial.

20 (4) Any item or material that is required under ~~par. (b)~~ sub. (2) ✓ to remain in
21 possession, custody, and control of a law enforcement agency or court is not subject
22 to the right of inspection or copying under s. 19.35 (1).

History: 1973 c. 196; 1975 c. 378, 421; 1989 a. 121; 1991 a. 223; 1993 a. 16, 486; 1995 a. 27, 387; 2001 a. 16; 2005 a. 42, 279; 2007 a. 20; 2009 a. 28, 138, 276; 2011 a. 284.

****NOTE: Please review the placement and content of this statute, including the cross-references. It was created as s. 971.23 (11) in 2011 Wisconsin Act 284. ✓

1 Insert 311-21

2 ~~SECTION 16.~~ 973.017 (6m) (a) 2. of the statutes is amended to read:

3 973.017 (6m) (a) 2. "Domestic abuse" has the meaning given in s. ~~968.075~~

4 969.27[✓] (1) (a).

5 History: 2001 a. 109; 2003 a. 321; 2005 a. 14, 277; 2007 a. 20, 96, 97, 116; 2009 a. 28, 209; 2011 a. 273.

6 Insert 316-23

7 ~~SECTION 16.~~ 973.06 (1) (av) 2. a. and b. of the statutes are amended to read:

8 973.06 (1) (av) 2. a. The defendant was charged under s. 946.41 solely because

9 he or she recanted a report of abusive conduct, including interspousal battery, as
10 described under s. 940.19 or 940.20 (1m), domestic abuse, as defined in s. 49.165 (1)

11 (a), 813.12 (1) (am), or ~~968.075~~ 969.27[✓] (1) (a), harassment, as defined in s. 813.125

12 (1), sexual exploitation by a therapist under s. 940.22, sexual assault under s.

13 940.225, child abuse, as defined under s. 813.122 (1) (a), or child abuse under ss.

14 948.02 to 948.11.

15 b. The defendant was a victim of abusive conduct, including interspousal
16 battery, as described under s. 940.19 or 940.20 (1m), domestic abuse, as defined in

17 s. 49.165 (1) (a), 813.12 (1) (am), or ~~968.075~~ 969.27[✓] (1) (a), harassment, as defined in

18 s. 813.125 (1), sexual exploitation by a therapist under s. 940.22, sexual assault

19 under s. 940.225, child abuse, as defined under s. 813.122 (1) (a), or child abuse under

20 ss. 948.02 to 948.11, and he or she was charged under s. 946.41 based on information

21 he or she omitted or false information he or she provided during the course of an

22 investigation into the crime committed against him or her.

23 History: Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1979 c. 356; 1981 c. 352; 1985 a. 29; 1987 a. 347, 398, 403; 1991 a. 39, 269; 1995 a. 27, 53, 448; 1999 a. 58, 69, 186;
2003 a. 104, 139; 2007 a. 84; 2009 a. 164; 2011 a. 32, 269.

24 Insert 321-24

1 SECTION ~~17~~ 973.195 (1r) (e) of the statutes is amended to read:

2 973.195 (1r) (e) Notwithstanding the confidentiality of victim address

3 information obtained under s. ~~302.1135 (7) (e)~~ (s. 302.113 (9g) (g) 3.) a district

4 attorney who is required to send notice to a victim under par. (d) may obtain from the

5 clerk of the circuit court victim address information that the victim provided to the

6 clerk under s. ~~302.1135 (7) (e)~~ (s. 302.113 (9g) (g) 3.)

Strike + move
period

NOTE: NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending. NOTE:

History: 2001 a. 109; 2005 a. 253, 277; 2007 a. 97; 2009 a. 28; 2011 a. 38, 258.

7

8 ✓ Insert PINK (follows insert 167-19 in other set of inserts)

****NOTE: As you noted, we removed this provision because it is merely informational. Informational provisions that do not make law or that do not qualify any provision that makes law are not included in the statutes.

**2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0031/plinsch
PJH&CMH:.....

1 Insert 56-25

2 **SECTION ~~4.~~** 304.06 (3) of the statutes is amended to read:

3 304.06 (3) Every paroled prisoner remains in the legal custody of the
4 department unless otherwise provided by the department. If the department alleges
5 that any condition or rule of parole has been violated by the prisoner, the department
6 may take physical custody of the prisoner for the investigation of the alleged
7 violation. If the department is satisfied that any condition or rule of parole has been
8 violated it shall afford the prisoner such administrative hearings as are required by
9 law. Unless waived by the parolee, the final administrative hearing shall be held
10 before a hearing examiner from the division of hearings and appeals in the
11 department of administration who is licensed to practice law in this state. The
12 hearing examiner shall enter an order revoking or not revoking parole. Upon request
13 by either party, the administrator of the division of hearings and appeals shall review
14 the order. The hearing examiner may order that a deposition be taken by audiovisual
15 means and allow the use of a recorded deposition under s. ~~967.04 (7) to (10)~~ 967.22.
16 If the parolee waives the final administrative hearing, the secretary of corrections
17 shall enter an order revoking or not revoking parole. If the examiner, the
18 administrator upon review, or the secretary in the case of a waiver finds that the
19 prisoner has violated the rules or conditions of parole, the examiner, the
20 administrator upon review, or the secretary in the case of a waiver, may order the
21 prisoner returned to prison to continue serving his or her sentence, or to continue on
22 parole. If the prisoner claims or appears to be indigent, the department shall refer

the prisoner to the authority for indigency determinations specified under s. 977.07
(1).

History: 1971 c. 125, 219; 1973 c. 90, 198, 333; 1975 c. 156, 199; 1977 c. 29, 353, 418, 449; 1979 c. 356; 1981 c. 266; 1983 a. 27, 64, 197, 528, 538; 1985 a. 262 s. 8; 1987 a. 244 ss. 1 to 3, 7; 1987 a. 412; 1989 a. 31 ss. 1699 to 1700p; Stats. 1989 s. 304.06; 1989 a. 107, 122; 1991 a. 39; 1993 a. 79, 89, 97, 178, 194, 227, 289, 377, 479, 491; 1995 a. 27, 77, 352, 387, 444, 448; 1997 a. 133, 181, 237, 275, 283, 284, 326; 1999 a. 32; 2001 a. 109; 2003 a. 33; 2005 a. 42; 2009 a. 28, 276; 2011 a. 38.

Insert 69-9

SECTION ~~2~~ 809.30 (1) (c) of the statutes is amended to read:

809.30 (1) (c) "Postconviction relief" means an appeal or a motion for postconviction relief in a criminal case, other than an appeal, motion, or petition under ss. 302.113 (7m) or (9g), ~~973.19~~, 973.195, 973.198, 974.03, 974.06, or 974.07
(2). In a ch. 980 case, the term means an appeal or a motion for postcommitment relief under s. 980.038 (4).

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 390 s. 252; Sup. Ct. Order, 112 Wis. 2d xvii (1985); Sup. Ct. Order, 123 Wis. 2d xi (1985); 1985 a. 332; Sup. Ct. Order, 136 Wis. 2d xxv (1987); Sup. Ct. Order, 161 Wis. 2d xiii (1991); Sup. Ct. Order No. 93-19, 179 Wis. 2d xxiii (1994); 1993 a. 16, 395, 451; 1995 a. 77; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; 2001 a. 16; Sup. Ct. Order No. 02-01, 2002 WI 120, 255 Wis. 2d xiii; 2005 a. 264, 434; 2007 a. 20; Sup. Ct. Order No. 04-08, 2008 WI 108, filed 7-30-08, eff. 1-1-09; 2009 a. 26, 28, 180, 276; 2011 a. 38.

Insert 77-24

SECTION ~~2~~ 911.01 (4) (c) of the statutes is amended to read:

911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or rendition; sentencing, granting or revoking probation, modification of a bifurcated sentence under s. 302.113 (9g), adjustment of a bifurcated sentence under s. 973.195 (1r) or 973.198; issuance of subpoenas or warrants under s. 968.375, arrest warrants, criminal summonses, and search warrants; hearings under s. 980.09 (2); proceedings under s. ~~971.14 (1r) (e)~~ 975.31; proceedings with respect to pretrial release under ch. 969 except where habeas corpus is utilized with respect to release on ~~bail or as~~ otherwise provided in ch. 969; or proceedings under s. 165.76 (6) to compel provision of a biological specimen for deoxyribonucleic acid analysis.

conditions

NOTE: NOTE: NOTE: Par. (c) is shown as affected by 2011 Wis. Acts 38 and 257 and as merged by the legislative reference bureau under s. 13.92 (2) (i).NOTE:

History: Sup. Ct. Order, 59 Wis. 2d R1, R366 (1973); 1977 c. 305 s. 64; 1977 c. 345; 1979 c. 32 s. 92 (16); 1981 c. 183, 367, 390, 391; 1987 a. 208, 398; 1991 a. 40, 269; 2001 a. 61, 109; 2005 a. 434; 2009 a. 24, 28, 214, 261, 349; 2011 a. 38, 257; 2011 a. 260 s. 81; s. 13.92 (2) (i).

Insert 79-3

~~SECTION 4~~ 938.195 (1) (a) of the statutes is amended to read:

938.195 (1) (a) "Custodial interrogation" has the meaning ~~give~~ given in s.

~~968.073~~ 969.165 (1) (a).

History: 2005 a. 60; 2007 a. 97.

Insert 84-12

~~SECTION 5~~ 939.621 (1) (a) of the statutes is amended to read:

939.621 (1) (a) A person who commits, during the 72 hours immediately following an arrest for a domestic abuse incident as set forth in s. ~~968.075~~ 969.27 (5), an act of domestic abuse, as defined in s. ~~968.075~~ 969.27 (1) (a) that constitutes the commission of a crime. For the purpose of the definition under this paragraph, the 72-hour period applies whether or not there has been a waiver by the victim under s. ~~968.075~~ 969.27 (5) (c).

History: 1987 a. 346; 1995 a. 304; 2011 a. 277.

~~SECTION 6~~ 939.621 (2) of the statutes is amended to read:

939.621 (2) If a person commits an act of domestic abuse, as defined in s. ~~968.075~~ 969.27 (1) (a) and the act constitutes the commission of a crime, the maximum term of imprisonment for that crime may be increased by not more than 2 years if the person is a domestic abuse repeater. The victim of the domestic abuse crime does not have to be the same as the victim of the domestic abuse incident that

1 resulted in the prior arrest or conviction. The penalty increase under this section
2 changes the status of a misdemeanor to a felony.

3 History: 1987 a. 346; 1995 a. 304; 2011 a. 277.

4 Insert 119-7

5 **SECTION 7.** 968.075 (1) (intro.), (a), (b) and (d) of the statutes are renumbered
6 969.27 (1) (intro.), (a), (b) and (d).

7 **SECTION 8.** 968.075 (1) ^e(c) of the statutes is renumbered 968.075 (1) (e).
8

9 Insert 145-7

10 **SECTION 8.** 968.28 of the statutes is renumbered 968.315 and amended to read:

11 **968.315 Application for court order to intercept communications.** The
12 attorney general together with the district attorney of any county may approve a
13 request of an investigative or law enforcement officer to apply to the chief judge of
14 the judicial administrative district for the county where the interception is to take
15 place for an order authorizing or approving the interception of wire, electronic, or
16 oral communications. The chief judge may under s. 968.30 968.335 grant an order
17 authorizing or approving the interception of wire, electronic, or oral communications
18 by investigative or law enforcement officers having responsibility for the
19 investigation of the offense for which the application is made. The authorization
20 shall be permitted only if the interception may provide or has provided evidence of
21 the commission of the offense of homicide, felony murder, kidnapping, commercial
22 gambling, bribery, extortion, dealing in controlled substances or controlled
23 substance analogs, a computer crime that is a felony under s. 943.70, sexual
24 exploitation of a child under s. 948.05, trafficking of a child under s. 948.051, child

1 enticement under s. 948.07, use of a computer to facilitate a child sex crime under
2 s. 948.075, or soliciting a child for prostitution under s. 948.08, or any conspiracy to
3 commit any of the foregoing offenses.

4 **History:** 1971 c. 219; 1977 c. 449; 1983 a. 438; 1987 a. 399; 1995 a. 448; 2011 a. 271.

5 Insert 167-19

^

6 **SECTION ~~10~~** 968.475 (3) of the statutes is created to read:

7 968.475 (3) Section 968.705 covers documents to be subpoenaed if the
8 documents are under the control of a person not reasonably suspected to be
9 concerned in the commission of a crime.

10 *insert* → *Do not. As you noted in the introduction*
11 Insert 172-17

12 **SECTION ~~11~~** 969.001 (intro.) of the statutes is renumbered 969.30 (intro.) and
13 amended to read:

14 **969.30 Definitions.** (intro.) In this chapter subchapter:

15 **History:** 1981 c. 183; 1987 a. 399.

16 Insert 176-6

^

17 **SECTION ~~12~~** 969.02 (3) (e) of the statutes, as created by 2013 Wisconsin Act 266,
18 is renumbered 969.33 (5) (g) and amended to read:

19 969.33 (5) (g) If the person defendant is charged with violating a restraining
20 order or injunction issued under s. 813.12 or 813.125, ~~may require the person~~
21 requiring the defendant to participate in mental health treatment, a batterer's
22 intervention program, or individual counseling. The judge court shall consider a
23 request by the district attorney or the petitioner, as defined in s. 301.49 (1) (c), in
24 determining whether to issue an order under this paragraph.

NOTE: NOTE: NOTE: Par. (e) is created eff. 1-1-14 by 2011 Wis. Act 266. NOTE:

History: 1971 c. 298 ss. 10, 13; 1979 c. 111, 112; 1981 c. 118, 183; 1989 a. 31; 1991 a. 63, 315; 1993 a. 486; 1999 a. 85; 2005 a. 59, 447; 2011 a. 266.

Insert 200-12

SECTION ~~18~~ 970.038 of the statutes is renumbered 971.026 and amended to read:

971.026 Preliminary examination hearings; hearsay exception. (1)

Notwithstanding s. 908.02, hearsay is admissible in a preliminary examination proceeding under ss. 970.03, 970.032, and 970.035, 971.027 or 971.75.

(2) A court may base its finding of probable cause under s. 970.03 (7) or (8), 970.032 (2), or 970.035 971.027 (2) or 971.75 (3) (b) in whole or in part on hearsay admitted under sub. (1).

History: 2011 a. 285.

***NOTE: This section incorporates 2011 Wisconsin Act 285 into the bill. Please review.

Insert 201-11

The motion may not be granted during the trial without the consent of the defendant.

Insert 202-15

The court's authority to suspend prosecution includes the authority to defer or delay the acceptance of a plea or to withhold entry of judgment.

Insert 213-11

(5) PROSECUTION COSTS. The county in which the plea is made shall pay the costs of prosecution if the defendant does not pay them, and is entitled to retain fees for

receiving and paying to the state any fine that the defendant may pay. The clerk where the plea is made shall file a copy of the judgment of conviction with the clerk in each county where a crime covered by the plea was committed. The district attorney shall then move to dismiss any charges covered by the plea of guilty, which are pending against the defendant in the district attorney's county, and the charges shall be dismissed.

Insert 227-20

****NOTE: I did not restore "forthwith" and delete "immediately." Our current style, per our Drafting Manual, is to use "immediately" in place of "forthwith." If it is not changed here, it will be changed, after the bill passes, under the revising authority under s. 13.92.

Insert 259-3

~~SECTION 14.~~ 971.17 (8) of the statutes is renumbered 975.565 and amended to

read:

975.565 Applicability of ss. 975.57 to 975.64. This section governs Sections

975.57, 975.58, 975.59, 975.60, 975.61, 975.62, 975.63, and 975.64 govern the

commitment, release, and discharge of persons adjudicated not guilty by reason of

mental disease or mental defect for offenses committed on or after January 1, 1991.

The commitment, release, and discharge of persons adjudicated not guilty by reason

of mental disease or mental defect for offenses committed prior to January 1, 1991,

shall be are governed by s. 971.17, 1987 stats., as affected by 1989 Wisconsin Act 31.

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 Wis. 2d 441 (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 Wis. 2d xviii (1990); 1991 a. 39, 189, 269; 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275; 1999 a. 89; 2001 a. 95, 109; 2003 a. 50; 2005 a. 277, 431; 2007 a. 20 ss. 3875, 9121 (6) (a); 2007 a. 116; 2009 a. 26, 28, 137, 266; 2011 a. 258.

****NOTE: Each of the sections mentioned should contain a cross-reference to this section. If you approve of how this section is drafted, we can do that in the next version. Otherwise, we could recombine ss. 975.57 to 975.64.

975.53 + 975.54
975.55
975.56

525

*

into
a
single section

Please
make
sure this
list
is complete

1 Insert 286-13

2 violates the United States or Wisconsin Constitution

4 Insert 300-23

5 **SECTION 15.** 972.10 (7) of the statutes is renumbered 972.23 (1) and amended
6 to read:

7 972.23 (1) If the court required selection of additional jurors have been selected
8 under s. 972.04 (1) so that alternates may be available, and, at the time the case is
9 submitted to the jury for deliberation, the number of jurors remains more greater
10 than the number of jurors required at final submission of the cause for deliberation,
11 the court shall determine by lot which jurors shall not participate in deliberations
12 and discharge them. For good cause, the court may discharge additional jurors other
13 than by lot.

14 History: 1979 c. 128; 1981 c. 358; 1983 a. 226; Sup. Ct. Order, 130 Wis. 2d xi (1986); 1993 a. 486; 1995 a. 387; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997).

15 Insert 305-17

16 972.18 (1) (a) "Custodial interrogation" has the meaning given in s. 968.073
17 969.165 (1) (a).

18 History: 2005 a. 60.

19 Insert 310-25

20 **SECTION 16.** 972.23 (title) of the statutes is created to read:

21 **972.23(title) Dismissal of alternate jurors.**

22 **SECTION 17.** 972.23 (2) of the statutes is created to read:

23 972.23 (2) The court may retain alternate jurors after the jury retires to
24 deliberate. The court must ensure that a retained alternate does not discuss the

shall

1 case with anyone until that alternate replaces a juror or is discharged. If an
2 alternate replaces a juror after deliberations have begun, the court shall instruct the
3 jury to begin its deliberations anew.

4
5 Insert 359-22

6 **SECTION 18. Effective dates.** This act takes effect on the day after publication,
7 except as follows:

8 (1) The treatment of section 969.02 (3) (e) of the statutes takes effect on January
9 1, 2014.

or on the day
after publication,
whichever is later

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0031/P1dn
CMH&PJH:cjs:ph

October 22, 2012

This version brings in current law for the sections affected by 2011 acts and makes most of the changes requested on the memo. These tasks created some new provisions for you to review while we incorporate the other changes requested. For instance, we have not written the analysis or provided titles in chapter 968 (the latter will require some file searching and we wanted to get this version to you soon). Please review ss. 968.325 and 968.335, as renumbered in the bill; we removed any stylistic changes not clearly permissible in s. 13.92 (1) (bm), but we did retain any changes that make the introduction and provisions following from the introduction consistent with current drafting style. We left those in as the revising attorney will make them (under s. 13.92 (1) (bm)) after the bill passes so it is better if we leave them in so you can review them rather than adding them later without your review.

Please review s. 968.645 — although I would have to look at the file because these provisions predate my involvement, I believe that most of the changes were incorporated per the department and law enforcement agencies. “Physical evidence” seemed to include the whole item whereas “biological material” included only the material needed. In other words, the department and the law enforcement agencies thought that current law would require preservation of an entire couch or car if biological material were found on a cushion or a carseat. The changes would require preserving only the material necessary. I will look into the drafting file for further information if you would like.

The cross-references to bail and bond are not necessary in section 969.30 because they are defined in s. 967.02 and apply to chs. 967 to 979. A note directing the reader to those definitions can be found at the beginning of ch. 969 in the statutes.

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